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GOODHUE ESTATE BILL.

STATEMENT OF THE PETITIONER

AGAINST THE BILL,

WITH EXTRACT FROM WILL, OPINIONS OF COUNSEL,
AND SUMMARY OF OBJECTIONS AGAINST
THE PASSING OF THE BILL,

HUMBLY SUBMITTED FOR THE CONSIDERATION OF HONOR-
ABLE MEMBERS OF THE LEGISLATURE.

BIBLIOTHÈQUE
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TORONTO, 20TH JANUARY, 1871.

GOODHUE ESTATE BILL.

SIR,—

By this Bill, now before the House, a construction is to be placed upon the Will of the late Hon. GEORGE JERVIS GOODHUE, plainly at variance with the Will, and his intentions and wishes; and by it the rights of several infants, for whom, under the Will, I am a Trustee, are to be taken away.

I find a printed document, purporting to be a report of what took place in relation to this Will before the Private Bill Committee, has been sent to every member of the House. That document is so partial and one-sided, and in many respects so incorrect, that it cannot but lead to misunderstanding and misapprehension.

I appeared before the Committee, and my Counsel were heard in opposition to the Bill; but the Committee refused to hear evidence against it, on the ground, as I understood, that such evidence would be contradicted.

I could not see that the evidence to be offered against the Bill *could* be contradicted, and the decision was to me entirely novel; for I never before knew of evidence being excluded on the ground that it might be contradicted.

Rumours had been circulated about the doors and lobbies of Parliament, which, coming to my ears, I knew to be untrue. It seemed to me that the Committee, though actuated by the strongest integrity of purpose, and the single desire to do justice, had acted under a misapprehension, and that the only course open to me was respectfully to approach each Member of the House, stating to him all the facts bearing upon this Bill, pledging myself to their truth as I do, and offering to substantiate them in evidence if I am permitted.

I write to serve no personal object or interest whatever. I beg to address you simply as a Trustee, in protection of the rights entrusted to my care, and to crave your consideration of what I have to say in that character, and in that character only.

In November, 1869, Mr. Goodhue, through his son-in-law, Mr. Thomas, requested me to act as his executor. I was by no means willing to act, but pressed by Mr. Thomas, I consented, and with his approval, and with the certainty that Mr. Goodhue would approve the selection, I wrote to a well-known gentleman in Toronto, to act with me. That application failing, I wrote Mr. Goodhue a letter, of which the following is a copy :

My dear Mr. GOODHUE :

I owe it alike to you, one of my earliest friends in Canada, and to your family, to act as one of the trustees and executors of your will if you are anxious I should do so ; but, as the position will be one of very grave responsibility and some considerable risk, you will not, I hope, think me unkind if I name to you those with whom I could cordially act for the benefit of your estate.

They are, Mr. Thomas, first ; then Mr. Street, either alone or with Harry added to him—the two I think making a very good combination ; then, if none of these are to be taken, Mr. Verschoye Cronyn.

I do not say these are the only names that can be thought of, but they are only those which occur to me now, and it seems to me all are good for your purpose as men well could be.

I should have gone down to see you this morning, but Mr. Thomas tells me you would prefer to-morrow ; in any event do not let the subject press or worry you, as that will retard the great good I trust Dr. Hodder's services will do you.

Believe me, most truly yours,

THE HON. GEO. J. GOODHUE.

HENRY C. R. BECHER.

Saturday morning, 27th Nov., 1869.

Mr. Goodhue having, without my seeing him, selected Mr. Cronyn, that gentleman accepted the position.

At Mr. Goodhue's request, I then attended him, and received from him, *and him alone*, full instructions as to the settlements and the Will he subsequently executed.

I needed not to be told the wishes of his family were for the immediate division of his property ; those wishes were but natural, and I shared them, and endeavored, without success, to have them

carried out. Having got his instructions, I told him I should get Mr. Leith to draft the settlements and Will; he desired me to "take time and draw them carefully—there was no hurry;" and so alive was he as to what he was doing, that one of his proposed executors, owing him a debt secured by mortgage, he wished corroboration from Mr. Leith of my assurance, that the making the mortgagor his executor would not bar the debt. Mr. Leith wrote him that it would not.

Mr. Leith having prepared the drafts of settlements and Will, I took them to Mr. Goodhue, read them over to him, and settled them with him. There was a clause for advancement of grandchildren in the draft settlement, which he struck out, though I urged good reasons, as I thought, for its remaining; there was a power of advancement in the draft Will, by which I and Mr. Cronyn could at any time during Mrs. Goodhue's life, with her consent, have advanced to any of his children any part not exceeding half of his or her expected share. This he struck out, though I urged him strongly not to do so; he said, however, he would think of it, and if he approved of it, would by and by make a codicil to his Will. With some few trifling alterations, beyond this the drafts were approved, and I sent them to Mr. Cronyn, that he might see the trusts we were to carry out. The drafts, which I have yet in my possession, were then engrossed; and on the 8th of December, I, Mr. Cronyn, my co-trustee, and my partners, Mr. Henry Becher and Mr. Street, attended their execution.

The two latter witnessed both settlements and Will; they were executed by Mr. Goodhue, in presence of all four of us, and read over slowly to him before execution, in presence of three of us—Mr. Street not being present, I think, till towards the last.

That these papers contained his wishes and will, and that he perfectly and thoroughly understood them in all their bearings, no one of us present could doubt, or ever has doubted.

Before this I had, at the instance of Mr. Thomas, intimated to Mr. Goodhue that a present advance of \$10,000 to his son would be of great benefit to him; after the execution of his will, he requested me to draw and send him a proper document for his son to sign as to this money. I promised to do so, said it would more properly be governed by a codicil to his will, and reminded him to

consider the question of advances to his children which I have before referred to in connection with this codicil.

On the occasion I now refer to, Mr. Goodhue executed six settlements, one in favor of each of his five daughters for the sum of \$30,000 ; the remaining one for the sum of \$22,000 in favor of his son, (\$8,000 having been previously advanced him.) Mr. Cronyn and I are trustees of these settlements. Our duty is to invest the moneys and pay the proceeds to each of Mr. Goodhue's daughters and son as received, and at their death to their children, &c. Before leaving the room Mr. Goodhue gave us a cheque for \$172,000 for these settlements, and I may add that the whole sum has been long since invested at rates of interest from seven to nine per cent.

And thus having provided, as he considered, for the present wants of his children, he, by his will, in language that cannot be mistaken, directed that the property he left untouched by other bequests, should accumulate until the death of his wife, and then, with this accumulation, be divided among his children *then living*, and the issue of such as should be dead. As to this, I beg to refer you to the full copy of the will annexed to my petition before the House, and to the extract from it appended to this letter.

I prepared a covenant for Mr. Charles Goodhue's execution as to the \$10,000, and sent it to his father on the following day, in a letter, of which the following is a copy, and which incidentally gave him a legal opinion upon the effect of his own will. (I should add, that he had made the cheque payable to bearer, and had been uneasy, as I heard, lest we might lose it, not knowing the fact that I had altered it to order, before leaving him :—)

LONDON, 9th Dec., 1869.

MY DEAR MR. GOODHUE,

I send you the covenant for Charles to sign as to the \$10,000. If he survives Mrs. Goodhue, it will effect your object, that this sum will be deducted from what he would be then entitled to under your will ; but if he does *not* survive her, I am inclined to think with your will as it *is*, your Executors would have to look to his estate for it, for his share would then have vested in his children. But when we come to draw the codicil you speak of, we can make that all right.

I hear you were uneasy about that small cheque last night. Know that it was payable to order, and was indorsed yesterday with a direction to transfer the amount, \$30,000, to each of five accounts, and \$22,000 to a sixth, opened by us with the Bank of Montreal. If anybody *had* stolen it, it would have done them no good. Pray don't make yourself uneasy as to any improbable negligence on the part of your Trustees.

Yours very truly,

HENRY C. R. BECHER.

THE HON. GEO. J. GOODHUE.

The covenant inclosed in it is in the following words, and the date is filled in and executed as on the day I sent it:

WHEREAS I, CHARLES FREDERICK GOODHUE, have this day received from my father, the Hon. GEORGE JERVIS GOODHUE, the sum of Ten Thousand Dollars, as a loan, payable to him, his executors or administrators, without interest, upon the death of my mother, LOUISA GOODHUE.

Now I, the said CHARLES FREDERICK GOODHUE, for myself, my heirs, executors and administrators, do covenant and promise to and with the said GEORGE JERVIS GOODHUE, his executors, administrators and assigns, that I, my heirs, executors or administrators, shall and will, upon or immediately after the death of my said mother, pay to him, the said GEORGE JERVIS GOODHUE, his executors or administrators, the said sum of Ten Thousand Dollars; and I declare and agree with him, his executors and administrators, that in the event of the said sum not becoming payable under these presents until after my said father's death, that his executors or administrators may, in case of my default, retain and keep back out of any moneys, legacies, shares or interests to which I may be entitled, or which may be devised or bequeathed to me under any the last Will and Testament, or any Codicil or Codicils thereto of my said father, the whole of the said sum of Ten Thousand Dollars, or such portion and portions thereof as I may have then left unpaid out of the said legacies, shares or interests, if all or any of them shall amount to so much, and if not, then that the whole of the said legacies, shares, and interests may be kept back and retained on account of my said indebtedness.

In witness whereof I have hereunto set my hand and seal this ninth day of December, 1869.

Signed, sealed and delivered }
 in presence of (S'd) } (S'd), CHAS. F. GOODHUE, [L. S.]
 FRANCES C. HAMMOND.

After this my co-trustee, Mr. Cronyn, and I visited him, with the object of inducing him to make a codicil giving the power of advancement he struck out of the draft Will, or more immediate benefit to his children; we used many good arguments, as we thought, but they were of no avail. Attentive and listening to what we said, the only encouragement we got was, "He would think of it;" "he would see."

I visited him, I think, three times after this alone, and brought the subject to his attention, the last time advising him at all events to let us pay the surplus yearly income to his children, with like result; the last time I saw him was on New Year's day, 1870.

He died on the 11th January, without intimating any desire, that I ever heard of, to make any change in his Will.

Mr. Cronyn, my co-trustee, does not join me in petitioning against this Bill, for the reason, as I understand him, that he still takes the view he and I alike took, but I now think erroneously, when I wrote Mr. Thomas the letter of the 10th February, which appears in the Promoters' report of the proceedings before the Committee: and that view was, that we should simply take no part in aiding the Bill. He has added, however, with me, his dissent, and very strongly, as will hereafter appear in our letter of the 24th October, to Mr. Crooks.

Within the last few days I requested Mr. Cronyn, with a view to my using his letter here, in such manner as I thought proper, to write me his recollection of what occurred in relation to the preparation and execution of Mr. Goodhue's Will.

I told him Mr. Crooks had refused to admit what his telegram stated in refutation of the rumours I have spoken of; that I had been informed on the best authority that a canvasser for the promoters had asked for support to the Bill, on the ground that I had drawn the Will against the understood wishes of Mr. Goodhue and his family for my own purposes, and that he did not understand it. That I desired to remove this imputation because it untruthfully and unjustly attacked the Will.

Mr. Cronyn thereupon wrote me the following letter:

LONDON, 18 January, 1871.

H. C. R. BECHER, Esq., Q.C.,

London, O.

MY DEAR BECHER,

You ask me for a statement of what, to my knowledge, transpired respecting the preparation and execution of Mr. Goodhue's will, that you might use the statement to rebut imputations made as to the part you took in the matter.

On Monday, 6th Decr., 1869, you called at my office and handed me draft of will and of deed of settlement, saying that you had just returned from reading them over and settling them with Mr. Goodhue. I read the drafts over that day, and returned them to you, and on the Wednesday following I accompanied you to Mr. Goodhue's, when several copies, picked at random, out of the six deeds of settlement, were read over to Mr. Goodhue, they being all alike, and afterwards you read the will over to him, slowly and distinctly. He appeared perfectly to understand it, and he then executed it. He then spoke to you about an advance of \$10,000 he proposed to make to his son Charles, to be charged against his share under the will, and asked you to draw up a form of receipt for Charles to sign. You suggested that a codicil had better be added to the will, explaining the advance referred to; and you asked Mr. Goodhue whether he had thought over something you had previously suggested to him, and which I understood to be that he should give his trustees power, in their discretion, to make advances of a portion of the surplus estate to the children during Mrs. Goodhue's lifetime, and you went on to say that it might be done in the codicil you proposed to add to the will. I do not recollect what reply, if any, Mr. Goodhue then made to your suggestion. Mr. Goodhue then signed a cheque for \$172,000, the total amount of the trusts, and I took it to the Bank of Montreal and got it marked.

About the 11th December, I called on Mr. Goodhue alone, and suggested to him his altering the will so as to allow distribution at his death among the children, of at least a portion of the surplus estate, pointing out to him the painful position the will placed Mrs. Goodhue in, in making the accession to the property depend on her

death, and yet giving her no power to free herself from it. Mr. Goodhue thanked me for calling; said he did not think that Mrs. Goodhue would find her position under the will embarrassing; but added that he would think the matter over, and let us (the executors) know if he desired any change.

On the 17th December I accompanied you to Mr. Goodhue, when we reported to him what we had been doing, up to that time, in relation to the settlement, and you again reminded him of the codicil you had previously proposed to add to the Will, urging the matter on his attention, pointing out that his sons-in-law, without an exception, were men to be entrusted with property. He appeared at first to assent to your proposition; but went on to speak of adding \$10,000 to each of the six settlements, making the calculation aloud, that that would make \$60,000, and ended by saying, to let it remain as it was for a few days, and he would consider the matter. I never saw Mr. Goodhue again alive.

I remain, sincerely yours,

(Signed,)

V. CRONYN.

In justice to Mr. Cronyn, I must state that since this letter was in type, I have to-day (21st Jan.) received a telegram from him, stating that he "does not oppose the Bill, and does not wish his letter used for that purpose." I use it here, I think, rightly for the purpose for which it was given.

Mr. Thomas having applied to me by letter on the 8th Feb. to assist him and Mr. Watson to induce the Legislature to pass a Bill, I wrote him the following letter, which the promoters have already given publication to, *without* the two that followed in relation to the same subject, although they both went before the Committee.

LONDON, 10th Feb., 1870.

MY DEAR SIR,

I only returned from Toronto last night, or your letter of the 8th inst. would have been more promptly answered.

As regards the question you put to me, whether I will assist you and Mr. Watson in endeavoring to induce the Legislature to pass the Act you mention in relation to Mr. Goodhue's will, I can only say, not comprehending the provisions you detail, that I shall

be very glad if you can obtain an Act which shall, with due regard to Mrs. Goodhue and the other annuitants' interests, hasten the division of the bulk of Mr. Goodhue's property among those who, at present, would be his residuary legatees—I mean his six children.

I do not feel it would be proper for me to take any part in the endeavouring to obtain such an Act. I can only say that its provisions would afford me very great satisfaction.

I am at length enabled to send you a lithographed copy of Mr. Goodhue's Will.

Yours, very sincerely,

(Signed) HENRY C. R. BECHER.

F. W. THOMAS, Esq.,
&c., &c.

Will you be good enough to send me Mr. Watson's address?

As regards this letter, I produce it as part of the truth; it was a letter I subsequently was convinced I should not have written; and being so convinced, I apprised Mr. Thomas of the fact in the letter of my Firm to him of the 7th June, produced and read before the Committee.

And I submit that that letter should in no way weaken my present opposition, revoked as it was so far back; indeed I go further, and say that no conduct of any Trustee, whether from misapprehension or otherwise, can or should lessen or take away the rights of those for whom he acts.

On the 28th May, Mr. Cronyn and I received a letter from Mr. Thomas, demanding, on the part of his wife, "the increase over and above what was requisite for life interest, to be paid to her to the extent of her share in the residuary estate of her father"; and we were told that this was a preliminary proceeding to an application for the present Bill, and that it was desired we should apply to a Judge for directions.

For myself, I could see no ground for Mr. Thomas's application; nothing to doubt, to go to a Judge about under the Will; but to be quite safe, Mr. Cronyn and I submitted the matter to the Hon. J. Hillyard Cameron.

About the 4th June we received his opinion, which is as follows:

TORONTO, 2nd June, 1870.

MY DEAR SIR:

I am in receipt of your letter of 30th May, with copy of Will of the late Mr. Goodhue, and letter of Mr. Thomas, referred to in your letter.

I have carefully examined the Will, and am of opinion that the interests of Mr. Goodhue's children under the Will are vested, although they cannot come into possession until after Mrs. Goodhue's death, and that if any of the children die before Mrs. Goodhue, and leave no issue living at her death, that the interest of such child will become divested, and be divisible among the other children and grand-children living at her death, in the proportions mentioned in the Will.

In my opinion, neither Mrs. Thomas, nor any of the children, is entitled to receive any income from the share so devised until after Mrs. Goodhue's death.

I consider that there is no case arising under the Will which requires the Executors to go to the Court for the construction of the Will.

If Mrs. Thomas desires to have the Will construed, or her Counsel consider that she has a present right to receive an income from her future share, let her file a bill so to declare it; but I think that the Executors should not do so, and I also think that it is their duty, under the Will, to resist any attempt to alter its provisions by Legislative enactment, as they have to provide, under the will, not merely for the protection of infant grand-children, but also to make good from the accumulated income, any loss that may arise in the investments, under the deeds made by Mr. Goodhue before his death, which they evidently might be disabled from doing if they had proceeded to a division and payment of the surplus income while Mrs. Goodhue lives, while they might become responsible for the payment to any one of the children who might die leaving no issue in Mr. Goodhue's lifetime, for any portion of the income which ought to have accumulated, and be distributed only after Mr. Goodhue's death.

Yours very truly,

[Signed] J. HILLYARD CAMERON

H. C. R. BECHER, Esq., London.

This letter received—Mr. Thomas's demand was refused, and he was apprised of it by the following letter:—

LONDON, June, 7, 1870.

DEAR SIR,—

We are requested by Messrs. Becher & Cronyn to inform you that they duly received your letter of the 28th May, and that having taken advice of Counsel, they decline to accede to the request you make in that letter.

Mr. Becher desires us to add, with reference to his letter to you of the 10th February last, that he and Mr. Cronyn have been advised by Counsel, to whom your letter of 28th May, with other

questions, was submitted, that, "it is their duty *under the Will*, to "resist any attempt to alter its provisions by *Legislative enactment*."

We are, dear Sir,

Your obedient servants,

(Signed) BECHER, BARKER & STREET.

F. W. THOMAS, Esq.

To this letter Mr. Thomas replied the next day as follows:—

BANK OF MONTREAL,

London, 8th June, 1870.

MESSRS. BECHER & CRONYN,

Executors, &c.

DEAR SIRS,

I am in receipt of a letter from Messrs. Becher, Barker & Street, in reply to a letter addressed you by me on the 28th ult., and regret that you find yourselves obliged to recede from your determination of the 10th Feb., to abstain from active opposition, should the children of the late Mr. Goodhue decide to initiate proceedings to obtain the passage of an Act of Parliament for their relief.

I am, yours faithfully,

F. WOLFERSTAN THOMAS.

Mr. Crooks, on behalf of the promoters of the intended Bill, having written to me and Mr. Cronyn on the 22nd September and 11th October, asking our concurrence, we replied to him by letter as follows:—

London, 24th October, 1870.

Dear Sir,—We are in receipt of your letters of the 22nd September and 11th October, the latter enclosing copy of a deed of distribution and settlement in relation to the estate and will of the Hon. Geo. Jervis Goodhue, deceased, with draft of a proposed Act to confirm it, for the passing of which latter you intend, as we understand, to apply to the Legislature.

As Executors and Trustees under a will which the testator declined to change himself, we cannot be concurring parties in any endeavour to make that change by legislation ; indeed we have been advised even that it is our duty to oppose such an endeavour.

We beg you therefore to understand that what you are doing and propose to do in this matter does not receive our concurrence.

We are, dear Sir,

Yours very truly,

(Signed,)

HENRY C. R, BECHER,

“

V. CRONYN,

Executors and Trustees under the will
of The Hon. GEORGE JERVIS
GOODHUE, deceased.

ADAM CROOKS, Esq., Q. C.

&c., &c.

Mr. Cameron, in his address before the Committee, produced Mr. Crooks' opinion on the Will as one against his own; and he added that Mr. Blake had given one, which, however, he did not produce. There is no word of this in the Report.

Mr. Cameron is reported at page 2 of the Report, to have said, that, “When the case was originally laid before him, by one of the “Trustees,” meaning, I take it, by me, for myself and Co-Trustee, “he said that the duty of the Trustees was not to consent to his “interpretation, nor yet to take the opinion of the Court of Chancery, and that the only power to settle the construction of the “Will was that of the Legislature.”

What the promoters put this forward for, in their so-termed Report, I do not know. Mr. Cameron never told us anything of the kind, and I am sure never used this language to the Committee; all that he ever said to us is in his opinion, which I have given at length.

This opinion was before the Committee, but is not noticed, nor is the following telegram, in the so-termed report of its proceedings. The telegram was placed by me in the hands of Mr. Cameron and Mr. Crooks, who both read it. I was anxious to show the Committee that it could be proved by my co-trustee, who was not a petitioner against the Will, that the *very change now sought to be made* in this Will by Parliament was called to the attention of the Testator, who, himself having the right to judge, declined it.

I felt that such a fact, established, should be fatal to the Bill in Committee, and I read the telegram, but I do not think it was heard by any of the Committee.

It is as follows :—

TORONTO, January 12, 1871.

By Telegraph from London.

To H. C. R. BECHER, Rossin House.

If promoters will not admit it, I confirm your statement that we jointly endeavoured unsuccessfully to obtain codicil to Will for immediate distribution of surplus estate amongst children.

V. CRONYN.

I have great respect for the judgment of my friend and co-Trustee, Mr. Cronyn; and finding that, notwithstanding Mr. Cameron's advice, he did not intend to oppose the Bill, I determined for my own satisfaction to seek further advice, as I had no desire to run counter to the wishes of Mrs. Goodhue and her children, unless bound to do so.

I applied, therefore, to an old and highly valued friend, whose position and experience fully warrant me in saying that I could not possibly have been better advised; he kindly gave me his advice, and under it I am fulfilling what I believe to be an imperative duty.

As regards Mrs. Goodhue's letter which appeared before the Committee, I desire to speak of it, and of herself with the greatest respect and consideration; but I have to submit that a reading of her letter with the Will, will show she is mistaken in the conclusion she mentions.

If Mrs. Goodhue be right, Mr. Goodhue's only object in tying up some \$400,000 or more, has been to secure her annuity of \$6,000.

I respectfully call your attention to the extract from the Will, the opinion of three eminent Counsel upon the construction of the Will, and the summary of objections to the Bill appended to this letter; as also to my petition before the House, with my reasons there given against the passing of the Bill; and I earnestly submit that the wishes and disposition of Mr. Goodhue in giving this property to his children, or grand-children should be respected: that his children should be bound to take his gift, according to his bounty, as he gave it, and not as they may prefer to take it, and that his Will should not be interfered with by legislation in any way.

I have the honor to be, Sir,

Your faithful servant,

HENRY C. R. BECHER.

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APPENDIX A.

Extract from Mr. Goodhue's Will.

After certain legacies and annuities, the devise is to his executors, in trust, that they shall

"during the life of my said wife accumulate all the residue, if any,
"of the said annual income and proceeds in the way of compound
"interest, by investing the same, and the resulting income thereof,
"in like manner, and with like powers authorized of and concern-
"ing the proceeds of my said real and personal estate; and on the
"death of my said wife, shall hold all the said trust, premises,
"rest and residue of my estate then undisposed of, and not other-
"wise disposed of by this my will, including the said accumulations,
"in trust, to make good any loss that may have theretofore arisen,
"and been ascertained in the investment or control of the several
"sums of money which I have paid over to the said Henry C. R.
"Becher and Verschoyle Cronyn, in trust for my children
"respectively, and which sums, and the trust thereof respec-
"tively, are more particularly described in certain Indentures
"of Settlement," &c., &c., and "thereafter as to all the said
"trust, premises, rest and residue of my estate then undisposed
"of, and not otherwise disposed of by this, my Will, includ-
"ing the said accumulations and reversionary interests, but sub-
"ject to the exception in favor of my said sister-in-law here-
"after set forth, in trust for all my children who shall be living on
"the death of my said wife, in equal shares, and the child or
"children of such of them as may then be dead, in equal shares,
"such grand-child or grand-children to be entitled to the share his,
"her or their father or mother would have been entitled to if living,
"the shares going to my daughters to be for their separate use,
"respectively, free from the control of their present or after-taken
"husband."

APPENDIX B.

We have perused a copy of the will of the late Hon. George Jervis Goodhue, dated 8th December, 1869, and are clearly of opinion that under the trusts and bequests therein of the proceeds of his residuary estate, his children, in the lifetime of his widow, take no vested interests, but interests contingent on surviving the widow, and which would only vest in a child under the will, on the death of the widow before the child. No conveyance or other disposition, by any child in the lifetime of the widow, though she should assent to or join in it, could defeat the rights of grandchildren referred to in the will; who, on the death of the parent, (child of the testator) in the lifetime of the testator's widow, would on her death, notwithstanding any such conveyance or disposition, according to the very words of the will, "be entitled to the share his, her, or their father or mother would have been entitled to if living." There is in fact under this will no gift to any children till death of the widow, and then only, as expressed in the will, to "all children who shall be living on the death, and the child or children of such of them as shall then be dead."

Language such as used in this will has been held to indicate so conclusively an intention that the interests should not be deemed vested, that it has not been allowed to be controlled by other language (wanting in this will,) from which a contrary intention might be inferred. See in re Payne, 25 Beavan 556. Mr. Preston, (Estates, p. 76,) says that "possibilities to persons not ascertained, as to the survivor of several, to children who shall be living at the death of their surviving parent, or at the death of one of the parents, or the like contingency, are not coupled with an interest."

JOHN T. ANDERSON.

AND. LEITH.

C. ROBINSON.

Toronto, 20th January, 1871.

APPENDIX C.

SUMMARY OF OBJECTIONS TO THE BILL.

The Act asked for is without precedent, unnecessary, and a violation of the rights of property.

1. *It is without precedent:*—No construction has been suggested which cannot be readily carried out *as regards the whole will*, without the aid of a statute, and without prejudice either to public or private interests. The delay required in order to settle the construction in the ordinary way, cannot injure the property or individuals, more than in the case of every other will. Under such circumstances, there is no instance of Legislative interference, and each of the cases referred to will be found clearly distinguishable on one or other of the grounds above mentioned.

2. *It is unnecessary:*—(1) As regards the law, assuming the legal construction of the will to be as the promoters suggest, the interference of the Legislature is not called for, for our Courts will place that construction upon it, and the Trustees will carry it out. Assuming it to be otherwise, as the Trustees are advised, it is improper, for there is no reason why the law should not be followed. The argument that because opinions differ on the will long litigation will be required to settle its meaning, would apply equally to every other case of a doubtful devise, and would substitute the Legislature for the Courts. This argument, moreover, is founded on the assumption, that in the event of our Courts deciding the fund to be distributable at once, the Trustees would have to go to the Privy Council before acting on such decision. From this view of their duty they (or Mr. Becher at all events) entirely dissent. They will act without hesitation under any decision of our Courts, as all other Trustees in Canada do, and as they are advised they may do with perfect safety. They believe, however, that no decision such as the promoters of the Bill desire will be given, because it would be contrary to law, and it seems plain that no confidence can be

felt in the possibility of obtaining it, or it would have been asked for before coming to the Legislature. The suggestion that the Trustees would necessarily carry the case to the Privy Council is in fact a mere imaginary difficulty, and if it be not felt to be such by those who make it, why do they not put it to the test by first getting an order from the Court of Chancery for distribution, and deferring this application until the Trusees show a disposition to decline acting under it. Any decision in any other case, where the matter in controversy exceeds \$4,000, would be subject to the same difficulty suggested here; it might be appealed to the Privy Council and reversed; and the argument therefore in effect is, that where the interest involved is of that value no Trustee should act, and no title can be considered safe under the judgment of any Canadian Court. Is our Legislature prepared to affirm this?

(2) As regards the facts—there is no suggestion of necessity; there are no debts due by the estate; no annual outlay not provided for; no land tied up, for the Trustees are directed to sell and invest the proceeds. The sole question is, whether the promoters shall have these proceeds immediately, without regard to the will, or when they become entitled under the will, (*which some of them may never be;*) and they assert no reason whatever why the Legislature should give them this money at once, whether the Testator so willed it or not, except their own desire to possess it.

3. It is a clear violation of the rights of property. There are five daughters and a son of the testator now living, all of whom, except one, have infant children. *By the will*, should a son or daughter die during the widow's lifetime, leaving children, such children, on the decease of the widow, could take their parents' share—(in this Mr. Cameron agrees with the counsel for the Trustees). *By the Act* it is proposed now to distribute the fund among the testator's children absolutely. One or more may dispose of or spend their share while the widow lives, and then die leaving children, in which event such children will be deprived of the property which, but for the Act, would have been theirs under the will. In other words, the children of each parent have now a right to their parents' share, should such parent die before the widow, and this right the Act takes from them.

Moreover, it is conceded, by Mr. Cameron at least, that should any child die without issue during the widow's life, such child would never become entitled to anything, while it is now proposed by this statute to give him his share absolutely. It may be added that the fact of five of the testator's children being daughters, and the possibility of a second marriage of a son-in-law during the lifetime of the widow, makes it the more prudent to protect the rights of the grand-children, and may have influenced the testator in making the provision found in his will for that purpose.

Suppose the testator, instead of making this will, had, while living, settled the money in the same terms, would any one then have ventured to assert the justice of interfering with it, either during or after his lifetime? and why are not his wishes, as expressed in his last will, to be at least equally binding?

BIBLIOTHEQUE
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